



Robert L. Barchi, President

February 12, 2014

Mr. Kenneth Swalagin
University Senate
Rutgers, The State University of New Jersey
ASB III, Suite 110
Cook/Douglass Campus

Dear Mr. Swalagin:

I am writing in response to the Reports and Recommendations on Charges S-0901 and S-1016, both related to Rutgers' policy on academic freedom, as adopted by the University Senate in May 2009 and April 2012, respectively. I thank the members of the Senate's Faculty and Personnel Affairs Committee for their careful examination of our policy on academic freedom, with respect to both who it includes and the specific protections it provides.

Academic freedom is among the most important principles underlying our higher education system, and as such it warrants periodic review and analysis. The Senate resolutions you have presented for consideration recommend that Rutgers amend the existing policy on academic freedom. The recommendation on S-0901 seeks to add language to clarify that the policy applies equally to tenured and non-tenured faculty as well as both full-time and part-time faculty. The recommendation on S-1016 seeks to explicitly expand the content of speech falling under the policy beyond academic discourse to include faculty discussion of institutional policy and action, professional duties, and university governance.

With regard to your proposal in response to S-0901, I note that by referencing "all members of the faculty of the University" the existing policy is inclusive of tenured and non-tenured faculty as well as full- and part-time faculty. Contingent faculty members are thus included in our policy. I also note that contingent faculty members are provided further explicit protection by the statewide licensure regulations. Specifically, New Jersey Administrative Code Title 9A:1-1.8 (h) states that "regardless of the specific nature of an academic appointment, be it initial, multi-year, temporary, or permanent, the principle of academic freedom shall apply to all faculty, including adjunct faculty . . .". Thus, I have no objection to adding "whether tenured or nontenured, full-time or part-time" as you request. However, I include one additional insertion to make explicit that graduate students and other instructors are afforded this same protection under academic freedom.

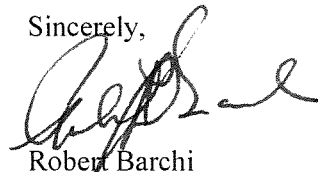
The new language (underlined below) would read:

Since the very nature of a university and its value to society depend upon the free pursuit and dissemination of knowledge and free artistic expression, all members of the faculty and teaching staff of the University, whether tenured or nontenured, full-time or part-time, are expected, whenever and wherever they engage in teaching, research, service, professional practice or clinical practice, as well as in their research and professional publication, freely to discuss subjects with which they are competent to deal, to pursue inquiry therein, and to present and endeavor to maintain their opinions and conclusions relevant thereto. In expressing those ideas which seem to them justified by the facts, they are expected to maintain standards of sound scholarship and competent teaching.

By copy of this email, I am asking Leslie Fehrenbach to make these changes to University Policy 60.5.1 and bring the amended language to the Board of Governors for its approval.

With respect to the recommendations in S-1016—to extend the type of speech covered under academic freedom to matters of public concern related to university governance—the Counsel’s Office has advised that discussion of such issues is already protected under the First Amendment, which affords individual faculty members the right to speak as private citizens on such matters. Academic freedom protects the rights of faculty to express themselves freely in the classroom and in their scholarship in relation to the pursuit and dissemination of knowledge within their disciplines. Faculty speech related to university governance, the performance of the administration, and related topics is protected by the First Amendment. While these both give faculty the right to freely express themselves, they are not the same thing and should not be conflated. Thus, I do not support expanding the definition of academic freedom to include non-academic speech. Further, I am not aware of any instance where faculty comments related to university policy, operations, or governance have been met with sanction or the threat of sanction. Therefore, I find this second requested change to be unnecessary.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Barchi", written over a horizontal line.

Robert Barchi

c: Richard L. Edwards, Executive Vice President for Academic Affairs
John Farmer, Senior Vice President and General Counsel
Leslie Fehrenbach, Secretary of the University